

Remarks

Based on the following remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections set forth in the Action.

A. *Status of the Claims*

Claims 1, 3, 5, 6, 8, 9, 15, 55, 59, 62, 64, 65, 71, 76 and 78 are currently pending in the application.

B. *Rejection of Claims Under 35 U.S.C. § 102(b)*

Claims 1, 3, 5, 6, 8, 9, 15, 55, 59, 62, 64, 65, 76, and 78 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Application Publication No. 2001/0007747 A1 (“Bochkariov”). Applicants respectfully traverse this rejection.

Present claims 1, 3, 5, 6, 8, 9, 15, 55, 59, 62, 64, 71, 76 and 78 are drawn to compositions or kits comprising 2 or more different, modified, monomeric deoxyribonucleotide triphosphates or reaction mixtures comprising nucleic acid molecules having 2 or more different, modified, monomeric deoxyribonucleotide triphosphates.

An anticipation rejection under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. See *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 771 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984). See also M.P.E.P. 8th ed., § 2131 (rev. 2, May 2004) (“To anticipate a claim, the reference must teach every element of the claim.”).

The Bochkariov reference does not teach compositions, kits or reactions mixtures that include all of the limitations encompassed by the currently presented claims. The Action states on page 3

that Bochkariov et al. “disclose kits and related methods for use in labeling nucleic acids.”

However, Bochkariov fails to disclose compositions, kits and/or reaction mixtures as currently recited in independent claims 1, 55 and/or 76, respectively. In particular, Bochkariov does not teach compositions or kits “comprising 2 or more different, modified, monomeric deoxyribonucleotide triphosphates” or reaction mixtures “comprising nucleic acid molecules having 2 or more different, modified, monomeric deoxyribonucleotide triphosphates” as currently claimed.

The labeling methods employed by Bochkariov involve the use of a single (or the same type of) modified monomeric deoxyribonucleotide triphosphate. This is in contrast to the present composition and kit claims that comprise 2 or more different, modified, monomeric deoxyribonucleotide triphosphates and/or the reaction mixture claims that comprise nucleic acid molecules having 2 or more different, modified, monomeric deoxyribonucleotide triphosphates. More specifically, Bochkariov’s labeling compositions and methods involve the use of a single type of nucleotide analog (e.g., allylamino-dUTP, also referred to as AA-dUTP) for labeling nucleic acid molecules within the same reaction, whereas in the instant case, the compositions, kits, and reaction mixtures involve the use of at least two different modified, monomeric deoxyribonucleotide triphosphates (e.g., AA-dUTP and AH-dATP). See, for example, Example 1, paragraph [0128] in Bochkariov and Example 1, paragraph [0055] in the instant case.

The Action asserts that at paragraph [0026], Bochkariov discloses compositions that “may comprise a plurality of modified nucleotides including those that are capable of binding one or more labels.” See Action at page 3. However, regardless of the ability of Bochkariov’s preferred “nucleotide analogs of interest” to bind multiple labels, Applicants fail to see any reference to the use of a plurality of different, modified nucleotides within the same composition, kit or reaction mixture anywhere in Bochkariov. Thus, Bochkariov does not anticipate the present claims and

Applicants therefore respectfully request that the Examiner provide a citation to the specific passage(s) of Bochkariov that supports the Action's assertions with regard to such combinations of at least 2 different, modified monomeric deoxyribonucleotide triphosphates, or withdraw the present rejection.

In conclusion, Bochkariov does not teach compositions or kits comprising 2 or more different, modified, monomeric deoxyribonucleotide triphosphates or reaction mixtures comprising nucleic acid molecules having 2 or more different, modified, monomeric deoxyribonucleotide triphosphates as is presently claimed. Thus, Bochkariov does not anticipate the presently claimed compositions, kits and/or reactions mixtures and Applicants request that the rejection of claims 1, 3, 5, 6, 8, 9, 15, 55, 59, 62, 64, 65, 76, and 78 under 35 U.S.C. § 102(b) be withdrawn accordingly.

C. *Conclusion*

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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